IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.261 of 2002 &
RSA No.387 of 2002

Reserved on 26.7.2007

Date of decision 14.9.2007

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1. Smt.Sarswati Devi and others — Appellants

Vs.

Jai Chand — Respondents

2. Mohar Singh — Appellant

Vs.

Smt.Swarsatri Devi and ors. — Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

(RSA No.261 of 2002)

For the Appellants: Mr.G.C.Gupta, Senior Advocate, with Mr.K.L.Bali, Advocate.

For the Respondents: Mr.K.D.Sood, Advocate.

(RSA No.387 of 2002)

For the Appellants: Mr.R.K.Gautam, Senior Advocate, with Mr.Navin Bhardwaj, Advocate.

For the Respondents: Mr.K.D.Sood with Mr.Rajnish K.Lal, Advocates for respondent No.5.

Rajiv Sharma, J.

Since common questions of law and facts are involved in these two regular second appeals the same are being disposed of by a common judgment. For clarity sake the Court will refer to the facts of each case independently.

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

RSA No.261 of 2002

The brief facts necessary for the adjudication of this second appeal are that predecessor-in-interest of the appellants-plaintiffs Gian Chand had filed a civil suit No.153/98/88 in the court of Sub Judge Ist Class (II), Kangra for the cancellation of sale deed dated 5.4.1988. He had also sought declaration to the effect that he was owner in possession of the land as detailed in the plaint. The respondent-defendant hereinafter referred to as the defendant for convenience sake filed written statement and contested the suit filed by the predecessor in interest of the present appellants. Gian Chand, predecessor-in-interest of the appellants died during the pendency of the civil suit and the present appellants were added as plaintiffs. The defendant had primarily contended before the trial court that the agreement dated 5.4.1988 was valid and had denied that any agreement was executed by Gian Chand in favour of Mohar Singh on 31.3.1988.

The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the suit is not maintainable, as alleged ?OPD
2. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
3. Whether the plaintiff has no locus standi and cause of action to sue? OPD
4. Whether the act and conduct of the plaintiff is a complete bar to the present suit? OPD
5. Whether the suit is collusive and Benami, as alleged, if so its effect? OPD
6. Whether the defendants are entitled to special costs under Section 35-A CPC? OPD

7. Whether the plaintiff is the owner and in possession of the suit land? OPP

8. Whether the plaintiff did not execute any sale deed on 5.4.1988 in favour of the defendant? OPP

9. Whether the alleged sale deed is fictitious, bogus, void and based on fraud and undue influence, as alleged? OPP

10. Whether the plaintiff executed any agreement of sale dated 31.3.1988 in favour of one Mohar Singh, if so, its effect ? OPP

11. Whether the defendant is a bonafide purchaser for consideration without notice, if so, its effect ? OPD

12. Relief.

The findings recorded by the trial court on the aforesaid issues are as under:-

Issue No.1	No
Issue No.2	No
Issue No.3	No
Issue No.4	No
Issue No.5	No
Issue No.6	No
Issue No. 7	No
Issue No.8	No
Issue No.9	No
Issue No.10	The agreement has no effect on the sale deed dated 8.4.88
Issue No.11	This issue has become redundant.
Relief	The suit of the plaintiff is hereby dismissed as per operative part of the judgment.

The trial court after taking into consideration statement made by PW-1 Desh Raj, DW-2 Mehar Chand, DW-3 Hari Singh, DW-4 Raj Kumar and DW-5 Jagdish Chand and after discussing and appreciating the documentary evidence dismissed the suit on 28.12.1998. The plaintiffs feeling aggrieved by the judgment and decree of the learned trial court dated 28.12.1998 had preferred an appeal before the learned Additional

District Judge, Kangra at Dharamshala on 26.3.1999. The learned Additional District Judge-1 had framed the following points for determination:

1 Whether the findings of the ld. Trial court are sustainable in law and on facts?

2. Relief.

The findings recorded by the learned Additional District Judge on the aforesaid points are as under :

Point No.1 Yes

Final order The appeal is dismissed per operative part.

The learned Additional District Judge had dismissed the appeal on 30.4.2002.

This appeal has been directed against the judgment and decree dated 30.4.2002. The second appeal was admitted on the following substantial questions of law on 27.6.2002:-

1. Whether the courts below were justified in dismissing the suit of the appellants in view of the specific finding recorded by both the courts below with respect to issue Nos.9A and9B framed in civil suit No.154/98/88 titled as “Mohar Sing vs. Gian Chand and others”, whereby the respondent had claimed possession of the part of the suit land by way of sale-deed dated 5.4.1988 and a decree for possession of land by way of specific performance of agreement dated 26.3.1971 and dismissal of counter claim No.174-98/87?

2. Whether the courts below were justified in dismissing the suit of the appellants/plaintiffs in its entirety in view of the fact that the respondent was claiming ownership only with respect to the part of the land qua which he had filed a counter-claim in the other suit?

3. Whether the courts below were justified in dismissing the claim of the appellants having held the agreement dated 5.7.1971 to be champertouch transaction and holding the same to be not enforceable under the law?

Mr.G.C.Gupta learned counsel for the appellants had strenuously argued that the judgment rendered by both the courts below are not sustainable in the eyes of law since there is misreading and mis-appreciation of evidence by the courts below. Mr.K.D.Sood had supported the judgment rendered by the courts below.

I have heard the learned counsel for the parties and have also gone through the records of the case.

All the substantial questions of law being interconnected are taken up together.

This court had already upheld the judgment rendered by the trial court in C.S.No.154/98/88 and the judgment rendered by the learned Addl. District Judge-1 dated 10.4.2002 in RSA No.387 of 2002 after appreciating the evidence led by the parties. The plaintiffs have primarily contended in the courts below that Gian Chand their predecessor in interest was abducted on 5.4.1988 from civil hospital, Kangra for the purpose of registration of sale deed dated 5.4.1988. No cogent evidence has been led in this regard by the plaintiffs.

PW-1 Desh Raj the holder of general power of attorney of the plaintiffs had testified that Gian Chand was an intelligent person since he had been pursuing litigation for the last 30 years. Accordingly it could not be presumed that Gian Chand was a simpleton. The defendant had duly proved the execution of the sale deed dated 5.4.1988 on the basis of the statements of DW2, DW3 and DW4. DW-5 Jagdish Chand, Manager with Kangra Central Co-operative Bank gave a receipt of Rs.26,000/- to Gian Chand on the very day and this fact was admitted by the general power of attorney of the plaintiffs. The sale deed dated 5.4.1988 is registered

document. The agreement dated 26.3.1971 had been declared as champertous transaction by the trial court in Civil Suit no.154/98/88 and the same cannot be given any credence.

There is no question of law much less substantial question of law in this appeal. According the regular second appeal is dismissed with no order as to costs.

RSA No.387 of 2002

This second appeal has been filed against the judgment and decree passed by the learned Additional District Judge-I,Kangra at Dharamshala in C.A.No.31-K/1999 dated 10.4.2002.

The brief facts necessary for the adjudication of this appeal are that the appellant plaintiff hereinafter referred to as the plaintiff had filed a suit in the court of learned Sub Judge Ist Class (II), Kangra on 23.6.1988 for possession by way of specific performance of agreement to sell dated 31.3.1988. Defendant No.1 Sh.Gian Chand admitted the claim of the plaintiff but defendant No.2 Jai Chand had contested the suit.

The learned trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the plaintiff is entitled for possession of the suit and by specific performance of agreement dated 31.3.1988 executed by defendant No.1 in favour of plaintiff? OPP

2. Whether sale by defendant No.1 in favour of defendant No.2 dated 5.4.1988 is illegal and void and has no binding on the plaintiff? OPP

3. Whether the sale dated 5.4.1988 by defendant No.1 in favour of defendant no.2 is fictitious, false and wrong and has been got executed under undue influence and coercion and is without consideration as alleged? OPD-1

4. Whether the suit is collusive as alleged?OPD-2

5. Whether the plaintiff has no cause of action and locus standi to sue?OPD-2

6. Whether the act, conduct, acquiescence of plaintiff, agreement dated 26.3.1971, sale dated 5.4.1988 and suit by defendant no.1 against defendant no.2 pending in the court of SSJ Dharamshala is a complete bar to the present suit as alleged?OPD-2

7. Whether the defendant No.2 is a bonafide purchaser for consideration and without notice? OPD-2

8. Whether the suit is bad for non-joinder of necessary parties, as alleged?OPD-2

9. Whether the agreement dated 31.3.1988 is a forged, fictitious document and has been fabricated after the sale dated 5.4.1988, as alleged?OPD-2

9A Whether the defendant No.2 is the owner in possession of part of suit land by way of sale dated 5.4.1988?OPD-2

9B Whether the defendant No.2 is entitled for a decree for possession of and as detailed in para No.8 of written statement by way of specific performance of agreement dated 26.3.1971, as alleged? OPD-2

10 Relief.

The findings recorded by the trial court on the aforesaid issues are as under:-

Issue No.1	No
Issue No.2	No
Issue No.3	No
Issue No.4	No
Issue No.5	No
Issue No.6	No
Issue No. 7	This issue has become redundant.
Issue No.8	No
Issue No.9	Yes
Issue No.9A	Yes
Issue No.9B	No
Relief	The suit as well as the counter claim are hereby dismissed as per operative part of the judgment.

The trial court on the basis of evidence, both oral and documentary led by the parties dismissed the suit filed by the plaintiff, vide its judgment and decree dated 28.12.1998. The plaintiffs feeling aggrieved by the judgment and decree of the learned trial court dated 28.12.1998 had preferred an appeal before the learned Additional District Judge-1, Kangra at Dharamshala on 1.4.1999. The learned Additional District Judge-1 had framed the following points for determination:

1 Whether the findings of the ld. Trial court are sustainable in law and on facts?

2. Final order.

The findings recorded by the learned Additional District Judge on the aforesaid points are as under :

Point No.1	Yes
Final order	Appeal and cross-appeal dismissed as per operative portion of the judgment.

The learned Additional District Judge had dismissed the appeal on 10.4.2002. The plaintiff feeling aggrieved by the said judgment and decree dated 10.4.2002 preferred second appeal, which was admitted by this Court on the following questions of law formulated at Serial No.1,2 and 3 at page 6 of the paper book:

1. Whether the courts below have failed to consider the evidence in its right and legal sense, the judgments are based on no evidence? Whether the Will which is the basic document of title has been misread and misconstrued and wrong inferences have been drawn from the facts proved on the record?

2. Whether the courts below have failed to interpret the basic principles of law and have wrongly held that it cannot be believed that if the parties had been litigating up to Supreme Court level they would have settled the matter amicably and this has been the main ground to disbelieve the contract to sell between the plaintiff and the defendant?

3. Whether the courts below inspite of the fact that they rightly held that the contract alleged to have been made between defendants was wrong, illegal being against the provisions of

section 23 of the Evidence Act, have wrongly dismissed the suit of the plaintiff-appellant and have failed to declare the sale deed made by defendant No.1 in favour of defendant No.2as wrong, illegal and sham?

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

All the substantial questions of law being interconnected are taken up together.

The plaintiff had assailed the sale deed dated 5.4.1988 executed in favour of respondent-defendant No.5 i.e. Sh.Jai Chand. It is alleged that sale deed dated 5.4.1988 in favour of respondent No.5 hereinafter referred as defendant No.5 for convenience sake is subsequent to agreement to sell dated 31.3.1988 and the agreement dated 31.3.1988 will have precedence over the sale deed dated 5.4.1988. Sh.Gian Chand predecessor in interest of respondents No.1 to 4 had admitted the claim of the plaintiff. The original defendant Gian Chand had died during the pendency of the suit and his legal representatives were brought on record. The legal representatives had given a general power of attorney to DW-10 Desh Raj who appeared as DW-10 and his version that Gian Chand was physically lifted from the hospital premises on 5.4.1988 for the purpose of registration of sale deed dated 5.4.1988 is not believable. This fact was also not pleaded in the written statement filed by deceased defendant Gian Chand. Jai Chand (DW-1), scribe (DW-2) and marginal witnesses DW-4 Mehar Chand and DW-5 Man Singh have also not said anything with regard to forcible removal of Gian Chand from the Civil Hospital, Kangra on 5.4.1988.

The findings recorded by the courts below that there was no coercion or influence on Gian Chand predecessor in interest of the

respondents No.1 to 4 for executing the agreement dated 5.4.1988 is upheld. Gian Chand had come in possession of the suit land on the basis of the execution petition filed by him in pursuant to the judgment of this Court dated 29.12.1987. The plaintiff was dispossessed on 5.3.1988. Thus it can be safely presumed that the plaintiff and Gian chand were not having cordial relations since they had been litigating for the last three decades.

The contention of Mr.R.K.Gautam, learned senior counsel for the appellant that the agreement dated 31.3.1988 was executed after the matter was compromised before the Supreme Court is untenable. Mr.Gautam has placed on record copy of the judgment passed by the Hon'ble Supreme Court in SLP(Civil) No.1069 of 1988. The appeal was withdrawn on the statement made by Mr.H.K.Puri counsel before the Hon'ble Supreme Court that the parties have settled the matter. The copy of the judgment should have been produced before the trial court since the judgment was rendered by the trial court only on 28.12.1998. PW-1 Mohar Singh has stated that it was only on the morning of 31.3.1988 that a compromise was arrived at in the presence of the members of Panchayat and thereafter an agreement to sell was executed. PW-2 Manjit Singh had stated that the settlement was arrived at 2/3 days before 31.3.1988. The other fact which has not been explained by the plaintiff is that as per one clause in the agreement Ex.PW1/A it has been stated that the sale deed was to be executed before 7.4.1988. No reasons have been assigned why the sale deed was to be executed before 7.4.1988. It is evident from the statements of the witnesses and the documents placed on record as well as on their correct appreciation that the agreement dated 31.3.1988 has been brought into just to nullify the subsequent sale deed dated 5.4.1988.

DW-2 Raj Kumar and marginal witnesses DW4 and DW5 have duly proved the execution of the sale deed in favour of Sh.Jai Chand.

In view of the above discussion it is clear that both the courts below have correctly appreciated the oral and documentary evidence led by the parties. The plaintiff and Gian Chand were litigating for the last 30 years and it cannot be believed that the matter was settled on 31.3.1988,which led to execution of sale deed in favour of the plaintiff. But sale deed made in favour of respondent No.5 Jai Chand has been duly proved on the basis of the statements of scribe, marginal witnesses The learned courts below have rightly declared the agreement dated 26.3.1971 entered into between Gian Chand and Jai Chand to be champertous being against the public policy.

In view of the detailed discussion above, the Courts below had rightly dismissed the suit of the plaintiff and no case for interfering with the same in the present regular second appeal is made out, especially when no question of law much less any substantial question of law arises for determination in this appeal.

In view of the above, finding no merit in the appeal, the same is hereby dismissed.

Cross Objections No.416 of2002

In view of the judgment rendered in RSA No.387 of 2006 validity of agreement dated 26.3.1971 has also gone into. Accordingly there is no merit in the cross objections and the same are dismissed.

September 14,2007(g) **(Rajiv Sharma),J.**